

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY	)	
AVERAGE WHOLESALE PRICE	)	MDL NO. 1456
LITIGATION	)	Civil Action No. 01-12257-PBS
	)	Subcategory Case No. 03-10643
THIS DOCUMENT RELATES TO:	)	
<i>The City of New York, et al.</i>	)	Judge Patti B. Saris
v.	)	
<i>Abbott Laboratories, et al.</i>	)	Magistrate Judge Bowler
	)	

**PLAINTIFFS' MOTION FOR EXPEDITED HEARING ON PLAINTIFFS' MOTION TO  
COMPEL DISCOVERY FROM DEFENDANT MERCK & CO., INC.**

Plaintiffs, the City of New York and New York Counties, respectfully request an expedited hearing on Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc. ("Merck"), dated September 4, 2009 [Dkt. No. 6487], which is fully briefed and *sub judice*.

As set forth in the Motion to Compel, Merck refuses to produce data and documents related to drugs at issue in the NY Counties' case that are alleged to have spreads in excess of 30%. Merck's position is contrary to the rulings of this Court, which make plain when discovery must be provided. Both CMO No. 33, which Merck and all other defendants presented to this Court through a Joint Motion [Dkt. No. 4690], and the Court's September 28, 2008 Order [Dkt. No. 5605] establish that plaintiffs are entitled to discovery on drugs with alleged spreads greater than 30%. Plaintiffs have demonstrated their entitlement to discovery on these drugs by setting forth over-30% spreads using the two methods approved by this Court. One is through the use of wholesaler data; the second through the use of Merck's AMPs. *See* Revised Exhibit B-24 to Plaintiffs' First Amended Consolidated Complaint [Dkt. No. 4754]; and Exhibit A to the Declaration of Harris L. Devor in Support of Plaintiffs' Motion to Compel Discovery from

Defendant Merck & Co., Inc. [Dkt. No. 6489]. Notwithstanding this, Merck refuses to produce data and documents critical to establishing the falsity of Merck's reported prices, to presenting this Court with a full and accurate record and to calculating damages under N.Y. Soc. Serv. L. 145-b.

Plaintiffs' expert reports are due on September 15, 2010. Those reports cannot be completed without the discovery sought by this motion, which has now been pending nearly eight (8) months. In addition, while depositions of Merck and its employees are ongoing, those cannot be concluded without a resolution of this motion.

Plaintiffs therefore respectfully request that a hearing on this motion be set at the Court's earliest convenience.

Dated: June 3, 2010

Respectfully submitted,

**City of New York and New York Counties in  
MDL 1456 except Nassau and Orange by**

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**CERTIFICATE OF SERVICE**

I, James P. Carroll, hereby certify that I caused a true and correct copy of the foregoing, PLAINTIFFS' MOTION FOR EXPEDITED HEARING ON PLAINTIFFS' MOTION TO COMPEL DISCOVERY FROM DEFENDANT MERCK & CO., INC., to be served on counsel of record via electronic service pursuant to paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File and Serve for posting and notification to all parties.

Dated: June 3, 2010

\_\_\_\_\_/s/\_\_\_\_\_  
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